



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Rite-Way Services of San Antonio, Inc.

File: B-243231

Date: July 11, 1991

John M. Taftany, Esq., Bailey & Shaw, P.C., for the protester, Lucie J. McDonald, Esq., and Paul M. Fisher, Esq., Department of the Navy, for the agency.

John Formica, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting officer properly rejected as nonresponsive a bid which contained a "retyped" Certificate of Procurement of Integrity where the retyped certificate omitted a paragraph from the required text as set forth in the solicitation and Federal Acquisition Regulation, because without the omitted paragraph it was unclear whether the bidder would be bound to all of the solicitation's requirements.

DECISION

Rite-Way Services of San Antonio, Inc. protests the rejection of its bid as nonresponsive for failure to include a properly executed Certificate of Procurement Integrity as required by invitation for bids (IFB) No. N62472-91-B-8430, issued by the Naval Facilities Engineering Command for hospital housekeeping services at the Naval Training Center, Great Lakes, Illinois.

We deny the protest.

The solicitation was issued on December 20, 1990. It contained the full text of the Requirement for Certificate of Procurement Integrity (Sept. 1990) clause as set forth at Federal Acquisition Regulation (FAR) § 52.203-8, which included instructions to bidders on how to execute the Certificate of Procurement Integrity, as well as the applicable certificate.

Fifteen bids were received by the bid opening date of January 28, 1991. Rite-Way submitted with its bid a Certificate of Procurement Integrity which it had "retyped" and signed. However, Rite-Way's retyped certificate deviated

from the required text of the Certificate of Procurement Integrity found in the solicitation. Specifically, Rite-Way's certificate omitted the following paragraph:

"(4) I agree that, if awarded a contract under this solicitation, the certifications required by subsection 27(e)(1)(B) of the Act shall be maintained in accordance with paragraph (i) of this provision."1/

The agency concluded that this paragraph imposed a material legal obligation on the contractor, and therefore Rite-Way's failure to agree to comply with the requirements of this paragraph rendered its bid nonresponsive.

Rite-Way argues that its bid should not have been rejected as nonresponsive. The protester first contends that the Navy erred by including an outdated version of the Certificate of Procurement Integrity clause in the solicitation, and that its bid should not be rejected for failure to comply with an outdated clause. The protester next contends that, in any event, the submission of a Certificate of Procurement Integrity is a matter of responsibility, not responsiveness. Finally, the protester argues that to the extent the submission of a Certificate of Procurement Integrity is a matter of responsiveness, the paragraph it omitted in its retyped certificate does not impose any material obligations on the contractor, and therefore its failure to include the paragraph in its retyped certificate cannot properly be the basis for finding its bid nonresponsive.

We have carefully reviewed all of Rite-Way's arguments and, for the reasons set forth below, we find that the protester's bid was properly rejected as nonresponsive.

First, while it is true that the agency did incorporate a version of the certificate that had been superseded, the current version of the certificate merely eliminated the need for bidders to certify compliance with section 27(f) of the Office of Federal Procurement Policy (OFPP) Act, which prohibits former government employees who worked on a particular procurement from knowingly participating in the award, modification, or extension of a contract for such

1/ Paragraph (4) of the Certificate of Procurement Integrity included in the solicitation contained a typographical error in that it referred to "paragraph (i) of this provision," while it should have referred to "paragraph (f)." The protester does not argue, and the record does not show, that the protester or any other bidder was misled or prejudiced in any way by this obvious error.

procurement. Bidders were still required to certify to the other requirements, such as the requirement that all individuals involved in the preparation of the bid will report any information concerning a possible violation of the OFPP Act to the officer or employee signing the certification. Therefore, the fact that the Navy did not include the most current version of the Certificate of Procurement Integrity did not relieve Rite-Way from its obligation to properly execute the Certificate of Procurement Integrity as set forth in the solicitation. Inland Serv. Corp., B-242993, June 25, 1991, 91-1 CPD ¶ ____.

We also disagree with Rite-Way that the submission of a properly executed Certificate of Procurement Integrity is a matter of responsibility, and not responsiveness. In a recent decision, Mid-East Contractors, Inc., B-242435, Mar. 29, 1991, 70 Comp. Gen. ____, 91-1 CPD ¶ 342, we held that the certification requirement, which imposes substantial legal obligations on the contractor, is a material solicitation term and, thus, a matter of bid responsiveness.

Finally, we disagree with Rite-Way's contention that paragraph (4) of the solicitation's Certificate of Procurement Integrity did not impose a material obligation on the contractor, and therefore its omission of this paragraph in its retyped certificate should not render its bid nonresponsive.

To determine whether a requirement is material, and hence a matter of responsiveness, we look, in part, to whether the requirement substantially changes the legal relationship between the parties. Mid-East Contractors, Inc., B-242435, supra. When considering certification requirements, our review focuses principally on the effect the certification and its provisions have on the obligations of the bidder if it receives award.


The Certificate of Procurement Integrity certification obligates a named individual--the officer or employee of the contractor responsible for the bid--to become familiar with the prohibitions of the OFPP Act, and imposes on the bidder, and its representative, a requirement to make full disclosure of any possible violations of the OFPP Act, and to certify to the veracity of that disclosure. In addition, the signer of the certificate is required to collect similar certifications from all other individuals involved in the preparation of bids.

Paragraph (4) of the Certificate of Procurement Integrity, which Rite-Way omitted from its retyped certificate, requires that the contractor agree to maintain these additional certifications--those collected from other individuals involved in the preparation of the bid--for a period of

6 years from the date a certifying individual's employment with the contractor ends, or for an agent, representative, or consultant, for a period of 6 years from the date the individual ceases to act on behalf of the contractor.

The certificate sets forth a separate certification provision at paragraph (4) that the bidder agrees to maintain the specified records. It is clear, in our view, that the record keeping requirement imposes a legal requirement on the bidder to which it otherwise would not be bound and is therefore material. See Mid-East Contractors, Inc., B-242435, supra. By failing to include the portion of the certification regarding the record keeping in its certificate, it was unclear whether the bidder merely omitted it by mistake or whether it specifically intended to reject the record keeping requirement. Under these circumstances, the bid was ambiguous, as it was unclear whether the bid unequivocally bound Rite-Way to maintain the certificates as required. The bid thus was properly rejected because a bid which does not constitute an unequivocal offer to perform in accordance with all of the material terms of the IFB is nonresponsive. Terra Vac, Inc., B-241643, Feb. 7, 1991, 91-1 CPD ¶ 140.

The protest is denied.


for James F. Hinchman
General Counsel